IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

FRIDAY, THE THIRD DAY OF SEPTEMBER,

TWO THOUSAND AND FOUR

PRESENT:

THE HON'BLE SRI JUSTICE G.BIKSHAPATHY

AND

THE HON'BLE SRI JUSTICE B. SESHASAYANA REDDY

WRIT APPEAL NO. 1791 of 1998

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated: 10.10.1996 in W.P.No. 3967 of 1989 on the file of the High Court)

Between:

1. The Andhra Pradesh State Electricity Board,

Vidyut Soudha, Somajiguda, Hyderabad.

Represented by its Member-Secretary.

2. The Superintending Engineer, Operation Circle,

A.P.S.E.B., Rajahmundry.

APPELLANTS

(Respondents)

AND

The Andhra Sugars Limited,

Venkatarayapuram, Tanuku,

Represented by its Chairman and

Managing Director Sri M.Harischandra Prasad

RESPONDENT

(Petitioner)

Counsel for the Appellant:SMT.M.VINOBHA DEVI
Counsel for the Respondent No.: M/S C.KODANDA RAM

The Court made the following:

J U D G M E N T :

(per G. Bikshapathy J)

1. The Writ Appeal is directed against the Order passed by the learned Single Judge in W.P.No. 3967 of 1989, dated: 10.10.1996.

2. The matter relates to levy of additional charges on the High Tension Consumers in pursuance of the Orders passed by the Andhra Pradesh State Electricity Board in B.P.M.S.No. 607, dated: 21.7.1981. Challenging the said additional charges by demand letter dated: 14.12.1988, number of H.T. Consumers filed Writ Petitions before this Court.

3. M/s Associated Cement Company Limited filed W.P.No. 2696 of 1989 questioning the levy of additional charges. The Company filed W.P.No. 5110 of 1988 seeking writ of mandamus restraining the respondent-Board from encashing bank guarantee issued in favour of the Board. The said W.P.No. 2696 of 1989 was allowed by the Division Bench by an Order dated: 28.8.1996, setting aside the levy of additional

charges, consequently W.P.No. 5110 of 1988 was dismissed as infructuous in view of the Order passed in W.P.No. 2696 of 1989.

4 . Similarly, M/s A.P. Papers Limited filed W.P.No. 4631 of 1989 questioning the decision of the Board for payment of additional charges. The said Company also filed W.P.No. 5012 of 1988 seeking writ of mandamus restraining the Board from encashing the bank guarantee furnished by the petitioner to the Board in respect of the additional charges. The Division Bench of this Court by Orders dated: 9.10.1996 quashed the demand levying additional charges and consequently passed Orders in W.P.No. 5012 of 1989 disposing of the Writ Petition in terms of the Order passed in W.P.No. 4631 of 1989.

5. As the petitioner also stood on the identical footing, the petitioner being H.T. Consumers filed W.P.No. 3967 of 1989 challenging the Order dated: 14.12.1988 levying the additional charges and to restrain the Board from encashing the bank guarantee. Since the matters were already covered by the decision of the Division Bench in W.P.No. 4631 of 1989 filed by Andhra Paper Mills, W.P.No. 2696 of 1989 filed by Associated Cement Company, wherein a challenge was made to the levy of additional charges through demand letter dated: 14.12.1988, consequent on which the Writ Petitions filed by the aforesaid companies challenging the action of encashment of bank guarantee was disposed of, the said Writ Petition filed by the petitioner in W.P.No. 3967 of 1989 came to be disposed of by the learned Single Judge basing on the Orders passed in W.P.No. 5012 of 1989, 5110 of 1989, dated: 19.9.1996. But, however, the present Writ Appeal has been filed by the Board challenging the Order of the learned Single Judge.

6. The learned Senior Counsel appearing for the Appellant-Board Mr. N. Subba Reddy also contended that on merits, the levy of additional charges are justified and hence he submitted before this Court that the matter has to be heard on merits as it is not covered by the decisions relied on by the learned counsel for the Writ Petitioner.

7. At this point of time, it was found that two courses are open to this Court to deal with the matter either it should be sent back to the learned Single Judge for fresh consideration on merits or this Court can itself consider the applicability of the decision of the Division Bench of this Court which are sought to be relied on by the petitioner and render appropriate decision in this regard. But, the learned counsel appearing for the Board as well as the Writ Petitioner submit that in view of the long lapse of time, it would be further consumption of time if the matter is again sent to the learned Single Judge for fresh consideration. More over, they submitted that the applicability of the Orders of the Division Bench is the prime question and therefore, this Court itself can hear the matter and dispose of the same on merits so as to render finality to the matter.

8. In view of the submission of the learned counsel for the parties, this Court was inclined to dispose of the Writ Appeal duly considering the merits of the case. For the sake of convenience, the parties in the Writ Appeal are referred as they were arrayed in the Writ Petitions.

9. Petitioner is a Public Limited Company incorporated under the Companies Act and having registered Office at Tanuku, West Godavari District in Andhra Pradesh in the year 1961. It has set up an industrial unit for manufacture of caustic soda, chlorine and allied products in West Godavari District. The energy was supplied to the petitioner by the respondent on the basis of agreement entered between the petitioner and the respondent. The energy was supplied to the petitioner unit at 11 K.V. voltage till January, 1974 and thereafter 33 K.V. voltage upto 24.6.1988. From 24.6.1988 the supply of energy was changed to 132 K.V. The petitioner is H.T. Consumer.

10. In exercise of powers conferred by Section 49 of the Electricity (Supply) Act, 1948, the Board is empowered to notify the tariffs from time to time. The Board issued B.P.M.S.No. 418, dated: 2.6.1981 notifying tariffs for various categories of consumers. We are only concerned with H.T. Consumers. Under the above notification the voltage

of supply to H.T. Consumers shall normally be 11000 volts/33000 volts and the Board reserves the right to supply at higher voltage of 66,132 or 220 K.V. at its discretion taking into account the contracted demand of the Consumer. However, in order to ensure that H.T. Consumers with different contracted demands avail supply at specified voltage, the Board decided to issue amendment to the existing H.T. tariff provision. Accordingly the Board issued B.P.M.S.No. 607, dated: 21.7.1981. The amendments reads thus:

"AMENDMENT

The existing condition (1) under Part-'A' of H.T. Tariffs is deleted and is substituted by the following:-

"Condition (1):- The voltage at which supply has to be availed by H.T. Consumer shall be

For contracted demand upto and }{ 11000 Volts

Including 15000 KVA }{

Far contracted demand from 1501 KVA}{ 33000 Volts

upto and including 5000 KVA. }{

For contracted demands from 5001 KVA}{ 132000 Volts or

and above }{ 220000 Volts as

decided by Board.

Existing H.T. Consumers who are availing supply at a voltage less than that specified above have to make necessary arrangements for changing their supply system within a period of 6 months to us to avail supply at the above voltages. Failure to make such arrangements to receive supply at the specified voltages within the specified period will attract additional charges for low voltages for compensating the Board against transmission and transformation losses and cost of additional capital incurred at the rates indicated below:-

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Contracted demand Voltage at which voltage at which Addl. Charge

of Consumer supply is to be supply is availed to be levied

availed

Upto and including

1500 KVA 11 KV 6.6 KV}{ 5%

3.3 KV}{

1501 KVA TO 5000 KVA 33 KV 11 KV 2.5%

6.6 KV}{ 7.5%

3.3 KV}{

5000 KVA and above 132KV or 66 KV 5%

220 KV 33 KV 7.5%

11 KV 10%

6.6 KV}{ 15%

3.3 KV}{

> The percentage of additional charge is leviable only on "Demand Plus Energy charges" billed during the month in respect of H.T. Consumers covered by the two part tariff and on "Energy charges" in respect of consumers billed on energy basis."

11. When the said B.P.M.S.No. 607 was issued, the contracted power demand in respect of petitioner's caustic soda unit was 24 M.V. (24000 K.V.A) and therefore, the petitioner was required to receive energy at 132 KV or 220 KV Voltage as per the said B.P. The additional charges leviable under the said B.P.M.S.No.607 for receiving energy at the lower voltage of 33 K.V. instead of at 132 K.V. was 7.5% on energy charges billed for the petitioner during the month. The Board gave such of those H.T. Consumers who were required to change over to higher voltage six months time to effect the change over and receive supply at higher voltage applicable to them i.e. upto 28.2.1982 and further clarified that after the said period such of those consumers who fail to receive supply at the respective higher voltages would have to pay additional charges as indicated in B.P.M.S.No. 607.

12. Feeling aggrieved by the above B.P.M.S.No. 607, High-Tension Consumers (H.T.

Consumers) including the petitioner challenged the same. Accordingly, the petitioner filed W.P.No. 2700 of 1982 questioning the validity of B.P.M.S.No. 607. However, the Writ Petition came to be allowed along with the Batch of similar Writ Petitions by an Order dated: 26.10.1982. The said B.P. was quashed. Aggrieved by the said Order, the matter was carried in appeal by the Board in W.A.NO. 1003 of 1982 and Batch and the Division Bench allowed the same on 25.6.1987. Thereupon, the H.T. Consumers challenged the Order of the Division Bench before the Supreme Court in S.L.P. No. 8396 of 1988. The Supreme Court disposed of the Civil Appeal No. 793 to 807 of 1988 by a judgment dated: 8.3.1988 reported in HYDERABAD ENGINEERING INDUSTRIES LTD. Vs. A.P. STATE ELECTRICITY BOARD. The Supreme Court up held the power to require its consumers to receive energy at higher voltage and thereby, upheld the validity of the said B.P.M.S.No. 607, dated: 21.7.1981. The Supreme Court observed thus:

> "12……..The fact remains that lower the voltage higher the transmission loss higher the voltage lower the transmission loss and it is also not in dispute that these appellants are high tension consumers consuming substantial power and therefore when power travels through transmission lines even for short distances it is not smaller quantities of power but heavy quantities of power are transmitted and in this view of the matter it could not be said that the policy decision taken by the Board to supply these high tension consumer power at high voltage so that transmission loss and transformation loss should be minimised could not be said to be any wrong decision or a decision not supported by scientific reasoning.

As regards the contention that it was the duty of the Board to establish and maintain Sub-stations and main transmission lines and that it was not open to the Board to transfer this responsibility to the Consumers by requiring them to make their own arrangements to step down electricity after taking it at a high voltage, the Supreme Court while rejecting the said contention held as follows:

> …….. Section 2, sub-clause (7) of the Act defines the

> main transmission lines but all this in sub-clause (7) of Section 2 refers to is about transmission of electricity from a generating station to another generating station or to a Sub-station. Apparently, it refers to all the lines and equipments required to be installed from the generating station to the distributing Sub-station. Apparently both being that of the Board itself it has to maintain it and on this basis it could not be contended that if the Consumer has to receive power at a higher voltage and if he wants to utilise it at a low voltage it is not his responsibility to install equipments for stepping down the power from high voltage to low voltage."

The Supreme Court also dealt in detail with the contention of the Consumers that the time of six months granted was too short considering the equipment required to be installed for the purpose of receiving energy at higher voltage and also for stepping down the voltage to the required levels by the Consumers themselves. The discussion in this regard in the judgment of the Supreme Court is relevant for the purpose of dealing with the questions raised in the present Writ Petition, which reads thus:

> "13. It was also contended that 6 months time granted was too short in view of the fact that these consumers were expected to install transformers and equipments which ordinarily are not easily available in this country and which involved high capital investment. It was also suggested that even the respondent-Board has not been able to lay lines for supply at high voltage as during the course of this litigation most of the appellants have accepted to receive the supply at the high voltage and the before it was contended that the enhanced rate for supply at low voltage which was brought into force immediately after six months of the issue of this notification is not only not justified as it was termed by learned counsel for the petitioners to be penal but it was contended that it is not reasonable as in spite of the fact that the petitioners accepted to receive supply at high voltage and some of them have even installed the transformers and other equipments but still Board was not in a position to lay supply lines for the high voltage supply of power and on this basis in substance it was vigorously contended that this enhanced rate should not be made chargeable from the date immediately after the expiry of six months after the issue of this notification.
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> 14. In one of the cases i.e. A. P. Paper Mills it has been

specifically alleged that in spite of the fact that the petitioner has installed a transformer but the respondent-Board could not lay down the lines as there was some injunction issued against the Board when the work for laying the lines started still although the Board is not in a position to supply the power at high voltage still the appellant is compelled to pay the higher rate as he is not receiving power at the high voltage indicated in the notification.

15. So far these aspects of the matter are concerned admittedly they were not before the High Court. Originally what was challenged in the High Court was the power of the Board to unilaterally alter the conditions of supply. This question about from what date the higher rates should be charged and as to whether grant of six months time to complete the preparation for receiving the supply at a higher voltage is reasonable or not were not before the High Court (single Judge) nor before the Division Bench and in fact, facts in respect of each petitioner on the basis of which these questions could be considered are also not before us although an attempt has been made by some of the appellants by additional affidavits and documents to place it before us. But it is not sufficient nor it is proper to decide these questions. After all the respondent-Board is, an authority under a Statute and if the appellants are able to satisfy the authority that the time of six months in the context of the circumstances when this notification was issued was not reasonable it is open to the Board to consider from what date to enforce the enhanced rates for supply at lower voltage taking into consideration all the cases and also keeping in view the circumstances in connection with installation of transformers and laying the lines which have come during the course of these hearings. It is also open to the Board that in the. Special facts of any particular case to provide a separate date for enforcement of the higher rate. But all these questions cannot be decided in the scope of the present appeals."

In the light of the above discussion, the Supreme Court left it open for consideration of the Board the question regarding imposition of the higher tariffs on failure of the Consumers to receive the supply of the voltage indicated in the notification at the rates specified therein or not, and gave liberty to the Consumers to approach the Board and left it open to the Board in the facts and circumstances of each case not to levy the

surcharge indicated in the notification during a particular period after taking into consideration the facts and circumstances of each particular case.

13. It is also stated that during the pendency of the appeal, the Board issued B.P.M.S.No. 1014 (Commercial), dated: 13.12.1983 revising the tariff. The said tariff was brought into effect from 15.1.1984. Under the said B.P.M.S, a specific condition was added to the effect that existing H.T. Consumers, who are availing supply at a voltage less than specified voltage have to make necessary arrangements for changing the supply system so as to avail supply of the heavy voltage, failure to make such arrangements to receive supply at the specified voltage will attract the additional charge for low voltage compensating the Board against the transmission and transformation and cost of additional capital incurred at the rate specified. Notwithstanding the payment of additional charges specified the Board has also reserved right to terminate the agreement of such consumers, who are not availing such supply of voltage. By this Order, no option was left with the existing H.T. consumers except to make arrangements for receiving energy at the specified voltage and failure to do so entails termination of the agreement.

14. In pursuance of the observations made by the Supreme Court in the case referred to supra, the petitioner submitted representations dated: 17.3.1988, 19.3.1988 and further detailed representation dated: 1.4.1988 and requested the Board not to levy additional charges upto 25.6.1988, on which date the Board made available energy at 132 K.V. The petitioner submitted that the respondents were not at all in a position to supply the energy at 132 K.V. to the petitioner's caustic soda unit, as the existing 132 K.V. supply line was laid only upto Kovvur village and no modifications were made to the existing 33 K.V. line between Nidadavole and Kovur by fitting necessary control and protection equipment. It is only after providing such equipment and making available the distribution main at Kovvur, respondents will be in a position to supply the energy and the petitioner will be in a position to receive such supply at 132 K.V. voltage. It is further stated that the respondents were required to lay the distribution line at Kovvur and for that purpose various works were to be undertaken to rectify the lines

and until such time the above works are completed, it can not be said that 132 K.V. is available at Kovvur and then the petitioner unit can avail or received energy at 132 K.V. It is stated that it is only on 25.6.1988, the respondents completed laying the distribution unit at Kovvur for supply of energy at Kovvur through one circuit line and second circuit line was not made available. It is further stated that the respondents not only not completed control room but also did not set up the station and battery for operating circuit and they were at present using the petitioner's equipment. It is stated that the respondents did not distribute the main line as to avail at 132 K.V. and number of instances were cited to establish that the respondents did not discharge their obligation to supply energy at 132 K.V. Detailed letters were also addressed right from 1982 on this issue. But, however, no response was forthcoming. It is further stated that on 25.11.1982, the Superintending Engineer, Rajahmundry, wrote a letter to the petitioner to acquire and hand over the site for arranging the erection of equipment. The same was replied and ultimately the land was acquired in August, 1987 and handed over the physical possession of the same to the respondents. Thereafter, the petitioner procured the equipment and made arrangements for erection of the Sub-station. It is also brought out in the Writ Petition that this Court on 24.9.1982 allowed the batch of Writ Petitions filed by H.T. Consumers challenging the validity of B.P.M.S.No. 607, dated: 21.7.1981. Subsequently, the Writ Petitions filed by the petitioner also came to be allowed on 26.8.1982, basing on the earlier judgments. Thereafter, the board preferred appeals and appeals were allowed on 25.6.1987. Therefore, during this interregnum, the Board did not take any effective steps to make available the energy at 132 K.V. at Kovvur and also did not finalise the site for point of supply, for the reason that the matter was sub-judice before the High Court in Writ Appeals. The Chief Engineer by a letter dated: 22.3.1988 requested the petitioner to deposit Rs. 19.39 lakhs towards the cost of work expansion of 132 K.V. supply to the petitioner as service line charges. The said amount was deposited with the respondents in the 1st week of March, 1988. However, it is observed the service line charges came to be collected only after 19.9.1985. Prior to that voluntary loan contribution (VLC) scheme was in existence and the scheme of service line charges was introduced through B.P.M.S.No. 693, dated: 19.9.1985.

15. It is also the case of the petitioner that the respondents did not take any steps to inform about the service line charges to be paid so as to make energy available at 132 K.V. by installing equipment and make necessary modifications. Even after 8.4.1988 also the respondents did not make available the energy at 132 K.V. till 24.6.1988. The respondents by a letter dated: 14.12.1988 informed to the petitioner that the said additional service line charges will be collected from 1.3.1983 instead of 1.3.1982. This relaxation was given to all H.T. Consumers. Under B.P.M.S.No. 607 the time fixed for change over was 1.3.1982. However, the respondents did not take into consideration the submissions made by the petitioner justifying that he was not liable to pay the additional charges.

16. The representation was however rejected by the Board in proceedings SE(Comml.)/III/248/88-3, dated: 14.12.1988 and 8.3.1989 without properly appreciating the contentions raised by the petitioner. In pursuance of the said Orders, the Superintending Engineer, Rajahmundry by letter dated: 10.1.1989 called upon the petitioner to pay a sum of Rs. 3,77,12,571.25 towards additional charges for the period from 1.3.1983 to 7.4.1988. However, on the representation of the petitioner the Superintending Engineer revised the additional charges and by his letter dated: 26.5.1989, the charges were calculated at Rs. 3,22,06,484-28.

17. It is the contention of the petitioner that terms of the agreement to receive supply of energy implies that the board is in a position to make available the required energy till such time that required energy is not available, and expression “to receive supply” would loose its meaning. The Division Bench in earlier Writ Petitions filed by the H.T. Consumers wherein the additional charges were demanded had considered in W.P.Nos. 2696 of 1989 and 4631 of 1989 and interpreted the said expression to the effect that until such time, the Board is in a position to supply the energy, the question of receiving the energy by the Consumers does not arise and only from the date it was in a position to supply, the Board is entitled to recover the additional charges. It is stated that the present case also stands on similar and identical footing and therefore,

the learned Judge has quite rightly allowed the Writ Petition and there are no grounds to interfere with the Order of the learned Judge.

18. In the counter filed by the respondent, it is stated that the H.T. supply to the petitioner was released on 23.9.1960. As per the agreement entered into between the petitioner and the Board, the energy was supplied to the factory at 11 K.V. voltage at Kovvur upto 9.1.1974 and 33 K.V. voltage from 10.1.1974. Petitioner has also executed an agreement dated: 26.12.1983 at the time of taking electrical E.M.D. of 4,000 KVA upto limit of 28,000 KVA to pay the normal H.T. power intensive relief rations plus fuel cost adjustment plus 7½% additional charge for non voltage supply as stipulated in B.P.M.S.No. 607 (Commercial) dated: 21.7.1981. The petitioner has executed an agreement on 24.6.1988 to take supply of 132 K.V. as required under the terms and conditions. He has also furnished an undertaking that he will change over from 33 K.V. to 132 K.V. within one year from the date of the agreement dated: 25.3.1981 and therefore, the petitioner failed to avail facility and hence he is liable for payment of additional charges. The representation of the petitioner filed before the Board in pursuance of the observations of the Supreme Court were considered and communication was sent on 14.12.1988 requiring the petitioner to pay the additional charges for the period from 1.3.1983 to 7.4.1988. It is stated by them that the demand made by them is quite legal and valid and it is in accordance with the directions of the Supreme Court. He further stated that as per B.P.M.S.No. 607, the petitioner has to avail supply of voltage. A notice was issued on 21.12.1983 to avail supply of 132 K.V. on or before 31.1.11984, otherwise, additional charges @ 7.5% will be levied as per B.P.M.S.No. 607. In response to the allegations made in para 11 it was denied that the Board has laid in its main distribution lines to Kovvur. In fact the service lines to the Factory was a double circuit 132 K.V. line charged initially at 33 K.V. to suit the convenience of the petitioner, the petitioner is liable for payment of additional charges from 1.3.1982. But, taking into consideration the difficulties of the H.T. Consumers, the date was changed to 1.3.1984. It is stated that the contention of the petitioner that the Board was not ready to supply the energy at 132 K.V. to the petitioner at Kovvur is not correct as the service lines to the petitioner factory was double circuit 132 K.V. was laid. Initially at 33 K.V. to suit the convenience of the petitioner. It is further stated that

the petitioner-Consumer paid service line charges on 30.3.1988 only and obtained the approval of C.E.I.G. for installation of the petitioner's equipment on 8.4.1988 and therefore, the surcharge was not levelled with effect from 8.4.1988 onwards. Initially, in pursuance of the Board letter dated: 14.12.1988, a letter was addressed to the petitioner to pay voltage surcharge for Rs. 3,77,42,571-25, but subsequently the amount was reduced to Rs. 3,22,06,484-28 vide letter dated: 26.5.1989. it was reiterated by the respondent that the Board was ready with 132 K.V. line upto the premises of the petitioner. It is further stated that arrangements for making power supply available at 132 K.V. were initiated by the Board.

19. The learned Senior Counsel for the respondent-Board, who is the Appellant in the Writ Appeal, and the learned counsel for the petitioner unit have made elaborate arguments on the subject.

20. Before going into the actual matrix and the crucial aspect of the matter, it is necessary to refer to the admitted facts. By virtue of the B.P.M.S.No. 607, dated: 21.7.1981, the petitioner is liable to switch over to 132 K.V. and in B.P.M.S.No. 1014, there was no option to the petitioner and other H.T. Consumers except to make necessary arrangements for receiving supply of energy at specified voltage. A threat of cancellation of the agreement was hanging on their neck.

21. The only question which centres round the litigation is as to the date on which the Board was ready or in a position to supply 132 K.V. energy and the petitioner was ready to receive such energy. The same and identical situation came up for consideration in the aforesaid Writ Petition Nos. 2696 of 1989 and 4631 of 1989 and it was held by the Division Bench that the Board was not ready to supply the energy during the period additional charges were levied and thus allowed the Writ Petitions. But, it is made clear that whether the Board was ready to supply the energy is a question which has to be decided on the basis of individual facts and circumstances. As already stated, the substituted condition in B.P.M.S.No. 607 were required to be

implemented by the H.T. Consumers. The condition reads thus:

> "Condition (1): The voltage at which supply has to be availaed by EHT/H.T Consumers shall be:
>
> For contracted demand upto }{ 11000 Volts.
>
> and including 1500 KVA }{
>
> For contracted demands }{ 33000 Volts.
>
> From 1501 KVA upto and in- }{
>
> cluding 5000 KVA }{
>
> For contracted demand }{ 132000 Volts. or
>
> From 5001 KVA and above }{ 220000 Volts as
>
> }{ decided by Board
>
> Existing H.T. Consumers who are availing supply at a voltage less than that specified above have to make necessary arrangements for changing their supply system within a period of 6 months so as to avail supply at the above voltages. Failure to make such arrangements "to receive supply" at the specified voltage within the specified period will attract additional charges for low voltages for compensating the Board against transmission and transformation losses and cost of additional capital incurred at the rates indicated below." (emphasis added)

Interpreting expression "to receive the supply" as mentioned in the aforesaid B.P.M.S.No. 607, the Division Bench in THE ASSOCIATED CEMENT COMPANIES LTD. Vs. A.P. STATE ELECTRICITY BOARD observed as follows:

> "The table showing the additional charges to be levied was already extracted earlier. A reading of this new Condition (1), to the extent relevant, shows that H.T. Consumers whose contracted demand was 5001 KVA and above should avail supply of energy at 132 K.V. or 220 K.V. as decided by the Board – so far as the petitioner is concerned, it was required to avail at 132 K.V. It is stated that H.T. Consumers availing supply at a lesser supply should make necessary arrangements for changing their supply system within a period of six months to avail the supply at the higher voltage. It is then stated that failure to

make arrangements to receive supply at the specified voltage within the specified period would attract additional charges for low voltages "for compensating the Board against transmission and transformation losses and cost of additional capital incurred" at the rate indicated. The additional capital incurred mentioned obviously is in respect of making available the supply to the Consumers concerned at the higher voltage. A reading of this condition (1) makes it obvious that the additional charges could be imposed only if the Board was in a position to supply energy at the higher voltage and yet the Consumer was not ready to receive supply at the specified higher voltage. Otherwise, it would lead to the unreasonable and absurd result that even though the Board was not in a position to supply the energy at the higher voltage, the Consumer should pay for not receiving the energy at the higher voltage. It would be unreasonable for the Board to charge for the period Consumer was not in a position to receive supply when in fact the Board was not ready and prepared to supply the energy at the higher voltage. On the facts of the present case, we are compelled to take this view because of the admitted fat that the petitioner paid to the Board as much as Rs. 27.89 lakhs towards the so-called "voluntary loan contribution" on 13.2.1982 itself and yet the Board had not taken any steps for enabling itself to supply energy at 132 K.V. to the petitioner. It would have been different if the Board was ready to supply energy within six months – or eighteen months – from 1.9.1981, the date when the amendment under B.P.M.S.No. 607 came into force, and the petitioner was not in a position to receive supply within the time allowed. We may also point out that extension of time by one more year from 28.2.1982 to 28.2.1983 was done only after the representation made by the petitioner and other Consumers, and was communicated only by the letter dated: 14.12.1988 of the member Secretary of the Board. This so-called extension was not after taking into consideration the difficulties and the problems faced by the petitioner in particular; it was a general "extension" given to all Consumers *Ex Post facto*. We have also to keep in view the fact that the additional charges are said to be levied to compensate against transmission and transformation losses and cost of additional capital incurred, obviously for not availing supply at higher voltage even though the Board was ready to supply energy at the specified higher voltage. In view of this position, we are unable to accept the contention advanced on behalf of the Board that the obligation of the Board to supply energy at the specified voltage was distinct

> and separate from the obligation imposed under the new condition (1) on the Consumer to be ready to receive the supply at the specified voltage, and that even if the Board was not ready to supply energy at the specified voltage, it could demand additional charges because the Consumer was not ready to receive the supply within the period allowed. In the context, we have to hold that the period allowed was both for the petitioner-Consumer as well as the Board and that the obligation to receive supply was dependant on the reciprocal obligation on the part of the Board to be ready to supply. We have also to hold that no levy additional charges on the basis of the new condition (1) when the Board itself was not in a position to supply energy at the higher voltage would be unreasonable and arbitrary.
>
> The expression used is to avail supply which would necessarily and logically mean that the supply was available but was not availed by the Consumer-when supply was not available, it cannot be said that it was not availed."

The Division Bench further held that one condition which was introduced enabling the Board to impose additional charge on Consumers for not going ready to avail supply within the stipulated time at higher voltage, even though the Board was not in a position to supply energy at specified higher voltage make it unreasonable, arbitrary and violative of Article 14 of Constitution of India. The Division Bench observed thus:

> "……It is well established that where a Corporation is an instrumentality or an agency of Government it would, in the exercise of its powers and function, be subject to the same Constitutional or Public Law limitations as apply to the Government and the principle of law inhibiting arbitrary action by Government would apply equally where such a c Corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise and it cannot act arbitrarily and enter into relationship with any person in any manner it likes according to its sweet will. The acts of such a Corporation must be in conformity with some principle which meets the test of reasonableness and relevance."

The Board has therefore, to act reasonably and without arbitrariness. We are also of

the view that in the context in which the new condition (1) was introduced, reading the said condition as enabling the Board to impose additional charges on Consumers for not being ready "to avail supply" within the stipulated time at higher voltage even though the Board was not in a position to supply energy at the specified higher voltage, would make it unreasonable and arbitrary and violative of Article 14. In L.I.C. OF INDIA Vs. CONSUMER EDUCATIONAL AND RESEARCH CENTRE (AIR 1995 S.C. 1811), the Supreme Court after a review of its various earlier decisions, held as follows:

> "In the sphere of contractual relations the State, its instrumentality, public authorities or those whose acts bear insignia of public element, action to public duty or obligation are enjoined to act in a manner i.e. fair, just and equitable, after taking objectively all the relevant options into consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest and it must not take any irrelevant or irrational factors into consideration or arbitrary in its decision. Duty to act fairly is part of fair procedure envisaged under Article 14 and 21. Every activity of the public accused or those under public duty or obligation must be informed by reason and guided by the public interest."

There is no doubt that under Section 49 of the Electricity Supply Act, 1948 the Board has power to lay down the conditions of supply. In HYDERABAD ENGINEERING INDUSTRIES LTD. Vs. A.P. STATE ELECTRICITY BOARD (AIR 1988 S.C. 985), the Supreme Court held that the Board had the power unilaterally to alter the conditions of supply including the power to alter unilaterally the supply at a particular voltage. The Supreme Court rejected the contention advanced on behalf of the Consumers that it was not open to the Board to direct the existing Consumers to take the supply at higher voltage than the voltage at which they were receiving the supplies. The Supreme Court also held that if the Consumer had to receive power at a higher voltage and if he wanted to utilise at a lower voltage, it would be his responsibility to install equipments for stepping down the power from high voltage to low voltage. It is in exercise of the power conferred on the Board by that Section 49 that the new condition (1) was

introduced by B.P.M.S.No. 607 dated: 21.7.198 fixing the voltage at which supply had to be availed by H.T. Consumers depending on their contracted demand. Condition (1) also required that H.T. Consumers who were availing supply at the voltage less than the specified therein had to make necessary arrangements for changing their supply system so as to avail supply at the specified voltages. If any Consumer failed to do so, it would attract additional charges for low voltage. Now this new condition (1) was introduced by the Board unilaterally. Time for making necessary arrangements to receive supply at the specified higher voltages by the Consumers was also unilaterally fixed by the Board at six months without taking into consideration the problems and difficulties that may be faced by any particular Consumer in view of circumstances peculiar to such Consumer. It is here that the question of the Board acting reasonably and fairly in unilaterally altering the conditions of supply arises. The observations of the Supreme Court L.I.C. OF INDIA Vs. CONSUMER EDUCATIONAL AND RESEARCH CENTRE (AIR 1995 S.C. 1811) that every activity of the public authority or those under public duty or obligation must be informed by reason and guided by the public interest are attracted to the Board in the exercise of its power unilaterally to alter the conditions of supply. The Board is undoubtedly a public service Corporation and not a trading Corporation as observed by the Supreme Court in THE KERALA STATE ELECTRICITY BOARD Vs. THE INDIAN ALLUMINIUM COMPANY LTD. (AIR 1976 S.C. 1031). Therefore, the new condition (1) has to be interpreted reasonably and fairly so that it will not be hit by Article 14 of the Constitution. We find that the Supreme Court virtually accepted this position in HYDERABAD ENGINEERING INDUSTRIES LTD. Vs. A.P. STATE ELECTRICITY BOARD (AIR 1988 S.C. 985), wherein it was held that “after all the respondent-Board is an authority under a Statute and if the Appellants are able to satisfy the authority that the time of six months in the context of the circumstances when this notification was issued was not reasonable it is open to the Board to consider from what date to enforce the enhanced rates for supply at lower voltage taking into consideration all the cases and also keeping in view the circumstances in connection with the installation of transformers and laying the lines which have come during the course of these hearings” and that it was “also open to the Board that in the special facts of any particular case to provide a separate date for enforcement of the higher rate”. The Supreme Court particularly referred to the case of

A.P. Paper Mills wherein it was specifically alleged that in spite of the fact that it had installed a transformer, the Board could not lay down the lines as there was some injunction issued against the Board when the work for laying the lines started and that still, although, the Board was not in a position to supply the power at high voltage, the A.P. Paper Mills was compelled to pay the higher rate as it was not receiving power at the specified high voltage applicable to it."

22. The Division Bench also referred to NORTHERN INDIA IRON & STEEL COMPANY LTD. Vs. STATE OF HARYANA wherein a H.T. Consumer questioned the action of the Haryana State Electricity Board in not giving reduction in the demand charges because of inability of that Board to supply energy to its factory manufacturing alloy steel and steel castings as per its requirements due to the shortage of energy in the State of Haryana and power cuts imposed pursuant to the Orders and directions of the State Government for maintaining the supply and securing equitable distribution of the energy. Clause 4(f) of the terms and conditions of supply made by the Board provided that "in the event of lock out, fire or any other circumstances considered by the supplier to be beyond the control of the Consumer, the Consumer shall be entitled to a proportionate reduction of demand charges/minimum charges provided he serves atleast 3 days' notice on the supplier for shut down of not less than 15 days duration". On behalf of the Consumer, it was contended that since the Board was not ready to serve the Consumer and the Consumer was ready to consume maximum electric energy, the former was not entitled to ask for any demand charge; on the other hand, it was asserted by the Board that it was entitled to assess and make the full demand charge irrespective of the fact whether it was in a position to supply the energy according to the demand of the Consumer or not. The Supreme Court answered as follows:

> "Such an extreme stand on either side appeared to us a bit puzzling and leading to inequitable results. The difficulty was not easy to solve. If we were to hold that for the Board's inability to supply a fraction of the Consumers demand as per the contract it could cm only the energy charge and not the demand charge, it would have been very hard and injurious to the Board and the Consumer would have unjustifiably got the supply at a very cheap

rate. If on the other hand, we were to say that the Consumer was liable to pay the entire demand charge as per the method of assessment provided in clause 4 of the tariff even when for no fault of it, it could get only a fraction of its demand fulfilled, resulting in its not being able to run the industry to its full capacity, it would be liable to pay a huge amount per month, and this will not only be uneconomical but would seriously affect its economic structure. But, we were happy to find that a just, equitable and legal solution of the difficulty was provided during the course of the argument on either side and that is with reference to sub-clause (f) of clause 4 of the tariff. It is, therefore, not necessary to resolve the extreme stand taken on either side.

……. The circumstances of power cut which disabled the Board to give the full supply to the Appellant because of the Government Order under Section 228 of the 1910 Act, undoubtedly would be a circumstance which disabled the Consumer from consuming electricity as per the contract. And this was circumstance, which was beyond its control and could not be considered otherwise by the Board. It entitled the Consumer to a proportionate reduction of the demand charges. This interpretation of sub-clause (f) of clause 4 of the tariff was accepted to be the correct, legal and equitable interpretation on all hands. In our opinion it is so. In a circumstance like this, it is plain, the obligation of the Consumer to serve at least 3 days' notice on the supplier as per the latter part of sub-clause (f) was not attracted, as the requirement of notice was only in the case of shut down of not less than 15 days duration.

We are, therefore, of the view that the inability of the Board to supply electric energy due to power cut or any other circumstance beyond its control as per the demand of the Consumer according to the contract will be reflected in and considered as a circumstance beyond the control of the Consumer which prevented it from consuming electricity as per the contract and to the extent it wanted to consume."

The Division Bench referring to the above case further held thus:

"A similar equitable interpretation has to be adopted on the facts of the present case. When the Board was unable to supply energy at 132 K.V. for whatever reason, till

> 9.11.1984, we have to hold that there was no failure on the part of the petitioner to make necessary arrangements for availing supply at 132 K.V. till that date. The position would have been different if the Board was in a position to supply energy at 132 K.V. before the petitioner was ready to receive supply at 132 K.V. In the view we have taken, it is not necessary to inquire into the question whether the Board was justified in extending the time allowed to the petitioner only by one year and whether it should have extended it upto 23.1.1984 as claimed by the petitioner."

The Division Bench found that "when the Board was unable to supply 132 K.V. for any other reason till 9.11.1984 they are of the opinion that there was no failure on the part of the petitioner to make necessary arrangements for availing supply at 132 K.V. till that date. The position would have been different if the Board was in a position to supply energy at 132 K.V. before the petitioner was ready to receive at 132 K.V. In view of this, it is not necessary to enquire into whether Board was justified in extending time allowed to the petitioner only one year and whether it should have been extended upto 23.1.1984 as claimed by the petitioner". In W.P.No. 2696 of 1989, the petitioner is Associated Cement Company, while in W.P.No. 4631 of 1989, the petitioner was A.P. Paper Mills, Rajahmundry. Following the decision rendered in Associated Cement Company's case, the said Writ Petition was also allowed. Of course, the facts of each case have to be considered to ascertain as to whether the Board was in a possession to supply the energy.

23. In the instant case, the question that has to be considered by us is as to whether the Board was in a position to supply energy as on the dates specified in the notice or whether the petitioner was not in a position to receive the energy even though it was made available.

24. For this purpose, it is necessary to refer to various documents and also the averments made in the affidavit. It was the firm contention of the petitioner that as on 31.1.1984, the respondent was not at all in a position to supply the energy at 132 K.V. to the petitioner unit and reasons were stated in para 11 of the writ affidavit which has

been extracted below:

"I state that as on 31.1.1984 the 1st respondent was not at all in a position to supply energy at 132 K.V. voltage to the petitioner's caustic soda unit at Kovvur because the then existing 132 K.V. supply line was only upto Nidadavole town and no modifications were made to the existing 33 K.V. supply line between Nidadavole and Kovvur by fitting the necessary controlling, switching and protection equipment. I state that the following works had to be completed the 1st respondent for being in a position to supply energy at 132 K.V. to the petitioner at Kovvur by providing 132 K.V. distribution main at Kovvur so as to enable the petitioner to avail supply at 132 K.V. voltage:

Works to be attended by APSEB for laying 132 K.V. distribution main at Kovvur.

A. Works to be done at Nidadavole town.

i. extension of existing 132 K.V. switch yard (Day) for accommodating two more 132 K.V. take off lines for sending power at 132 K.V. voltage to Kovvur.

ii. Erection of protection and controlling equipment and accessories for the additional 132 K.V.

a. 132 K.V. lighting arrestors 6 Nos.

b. 132 K.V. circuit breakers – 2 Nos.

c. 132 K.V. line isolators – 2 Nos.

d. 132 K.V. current transformers – 6 nos.

e. 132 K.V. potential transformers – 3 nos.

iii) laying of 132 K.V. double circuit line between 132 K.V. take off bay and first tower of Nidadavole-Kovvur double circ it tower line (than existing 33 K.V. double circuit lines)

iv) erection of earth electrodes and earthing system.

v. conducting pre-commissioning tests.

B. Works to be done at the 1st respondent's 132 K.V. Sub-station at Kovvur town.

i. erection of 132 K.V. double circuit receiving bay

ii) erection of line controlling and protection equipment such as

a. 132 K.V. lighting arrestors – 6 Nos.

b. 132 K.V. line isolators with earthing blades. 2 nos.

c. 132 K.V. communication voltage transformers.

d. Laying of double circuit 132 K.V. line between fifth tower from Kovvuru and 132 K.V. receiving bay:

e. Erection of earthing system:

f. Conducting pre commissioning tests; and

g. Charging the system at 132 K.V.

Only after the above works are completed it can be said that 132 K.V. distribution main is available at Kovvuru and only then the petitioner's caustic soda unit can avail or receive energy at 132 K.V. voltage. I state that on 24.6.1988 the first respondent completed the laying of the distribution main at Kovvuru for supply of energy at 132 K.V. voltage through one circuit line: the second circuit line was not yet made available. The first respondent did not yet completed the control room and did not yet set up station transformers and battery for operating circuit breakers and are at present using the petitioner's equipment."

25. However, in reply to the averments in para 11, the respondents have stated as follows:

> "In reply to the averments made in Para-11 petitioner affidavit. It is not true that Board has not in its main distribution lines to Kovvur. In fact the service lines to the Factory was a double circuit 132 K.V. line charged initially at 33 K.V. for release supply at 33 K.V. to suit the convenience of the petitioner and it is not correct to say that no distribution lines at 132 K.V. are available at Kovvur."

It has to be seen that this will not meet the requirement of the averments. It has been categorically stated for erecting 132 K.V., the process as enumerated in para 11 has to be gone through. It is not the case that this process was not required and was not even denied in the counter. The only thing which was sought to be stated by the Board was that the lines to the Factory was a double circuit 132 K.V. changed, initially at 33 K.V. to suit the convenience, but it is stated that even though line was capable of carrying 132 K.V., but when the capacity has to be changed from 33 K.V. to 132 K.V., certain modifications and alterations have to be made as set out in para 11 and it was never stated in the counter that such modifications were not necessary and simple release would be sufficient. Admittedly, the line was charged at 33 K.V. only and it was not charged to 132 K.V. It is also the contention of the petitioner that right from February, 1982 communications were being addressed to the respondents. On 4.2.1983, the petitioner wrote a letter to the Superintending Engineer intimating that the petitioner was trying to acquire the land and requested the authorities to visit and examine the suitability before the petitioner finalises the site, the petitioner also addressed a letter to the Executive Engineer on 23.2.1983. On 10.8.1983, the petitioner addressed another letter to Superintending Engineer, Rajahmundry requesting him to inspect the site. There was no response and as the site could not be inspected, clearance from the respondent was awaited. In the meanwhile, the challenge was made to the B.P.M.S.No. 607 and the said notification was set aside by the learned Single Judge. The respondent-Board filed appeals and they were ultimately allowed on 25.11.1982. In this interregnum, from 1982 to 1987, the respondent did not take any steps to make available energy at 132 K.V. at Kovvur village and also finalise the supply, which was necessary preconditions to enable the petitioner to receive the energy at 132 K.V. at Kovvur unit. It is only during the year 1987, an extent of one acre of land was acquired and the same was intimated on 13.7.1987 offering to provide the land required by the

respondent for setting up of 132 K.V. Sub-station and requested him to erect at the petitioner's 132 K.V. Sub-station. The said offer was accepted by the Chief Engineer on 15.7.1987 and it was stated in the said letter that it should be made available to the 1st respondent free of cost. Accordingly, the petitioner acquired the site in August, 1987 and handed over the physical possession of the required area to the respondents. The petitioner thereafter procured the equipment after the land was made available for erection of Sub-station. In the representation dated: 1.4.1988, it has been stated that the petitioner has completed setting up of two 132 K.V. Sub-station spending nearly two crores and that the land was given by the petitioner to the 1st respondent free of cost for setting up the distribution line and supply point. They were not yet made ready. But, on the other hand, on 22.3.1983, the Chief Engineer, Rural Electrification and Distribution called upon the petitioner to deposit a sum of Rs. 19.39 lakhs towards the cost of work for extension of 132 K.V. supply to the petitioner as service line charges and the said demand was also complied in March, 1988. Even though the entire clearance was made and even necessary certificate was obtained from the competent authority by 7.4.1988, the respondent made available the 132 K.V. energy only from 24.6.1988 and intimation regarding the service line charges was only given on 23.3.1988 and the amount was deposited on 30.3.1988. For this contention, no specific reply has been made in the counter filed by the respondent except stating that the double line was already laid with intake of 33 K.V. therefore, this contention is not sustainable.

26. The crucial question that calls for consideration is even though lines were laid initially charged with 33 K.V. but whether it is necessary for the department to make necessary arrangements for supplying 132 K.V. for which any further installations or erections have to be made. As can be seen from the correspondence right from 1982 to 1987, the distribution line and supply point has to be established by the respondents to enable the petitioner to receive their supply. For this purpose, the point of supply has to be identified and decided by the authorities. Till 1987, that point was not decided at all. The correspondence right from 4.2.1982, in the letter of the petitioner dated:

4.2.1982, 23.8.1982, 10.8.1983 and 13.7.1987 would clinchingly establish that the petitioner was intimating about the selection of the site and no response was forthcoming and it is only on 15.7.1987, the offer was accepted and it was made clear that the land should be available to the 1st respondent free of cost. Accordingly, the site was handed over in August, 1987. These issues were also clearly brought out in the representation filed by the petitioner on 1.4.1987 and subsequent representations, but the respondents have not given any reply to these allegations or averments in the affidavit filed by the petitioner Company. The petitioner has been reiterating right from his representation dated: 1.4.1988 to the effect that the respondents have not made available 132 K.V. power. Paras 4 to 10 of the representation dated: 1.4.1988 are relevant, which are extracted below:

> "4. At the outset we submit that there was and is no distribution line to supply energy at 132 K.V. at Kovvur to enable us to receive energy at that voltage. The supply point of energy at 132 K.V. was also not fixed by the Board and intimated to us to enable us to make arrangement for receiving energy at that voltage. It is only after these are done by the Board that we can have the plan and designs of sub-section made and Orders placed for supply of equipment after calling for tenders. As the equipment required is to be manufactured to suit the special requirements and technical details have to be worked out on that basis, its supply will take a minimum of 18 months.
>
> 5. In fact we made preliminary enquiries as long back as December, 1980 itself and 2 reputed companies viz. Siemens and Genelec sent replies in February, 1981 stating that supplies of the equipment could be completed, excluding transportation time, only 18 months after the Orders were placed and that installation of the equipment at the site would take another 6 months. On 4.2.82 we addressed a detailed letter to the Board informing them about the replies received from Siemens and Genelec and stating that Orders could be placed only after finalisation of the site for locating the point of supply for energy at 132 K.V. by the Board. On 25.11.1982, the Superintendent Engineer, T.L.C. Circle, Rajahmundry wrote to us to acquire and hand over to the Board the site for establishing the point of supply by the Board. On 4.2.83 we replied to the Superintendent Engineer informing him that we were trying to acquire land near the Godavari bund, and

requested him to visit the site and examine its suitability before we could finalise its acquisition. We also addressed a letter to the Executive Engineer, T.L.C. Division, Rajahmundry on 23.2.1983 informing him about the new site and requesting him to inspect and examine its suitability. On 10th August, 1983 we addressed another letter to the Superintendent Engineer, T.L.C. Circle, Rajahmundry once again requesting him to inspect the new site across the godavari bund and informing him that in the absence of his certificate regarding its suitability we cold not proceed further. There could be no further progress thereafter because the site was not inspected and the clearance for the same was not given.

6. It will be relevant at this point to notice that on 24.9.1982 the Hon'ble High Court of Andhra Pradesh allowed Writ Petition Nos. 165 of 1982 and batch and set aside the additional surcharge sought to be imposed under B.P.M.S.No. 607 dated: 21.76.1981. Subsequently, Writ Petition No.2700 of 1982 rpferred by us against the additional charges under the said B.P.Ms. was also allowed on 26.10.1982. The Board preferred appeals and they were not disposed of by the Division Bench of the Hon'ble High Court till 25.6.1987. Under the circumstances the Board also did not take steps to make available energy at 132 K.V. at Kovvur and also finalise the site for the point of supply both of which are inescapable preconditions for our being able to receive energy at 132 K.V. for our Kovvur unit.

7. Subsequently, in July, 1987 we found that an extent of about 1 acre of land on the southern side of our Kovvur factory premises was being offered for sale and we also came to know that the Board proposed to sanction a 132 K.V. Sub-station at Kovvur and was in search of a suitable site. We then addressed a letter dated: 13.7.1987 offering to provide the land required by the Board for setting up its 132 K.V. Sub-station and requested the Board to erect at our cost our 132 K.V. Sub-station also adjacent to its 132 K.V. Sub-station and accept it as the supply point. The said offer was accepted by the Chief Engineer (Transmission) in his letter No. CPT/241/Kovvur/87-1 dated: 15.7.87. IN the said letter we were informed that the land should be made available to the Board free of cost and that the Board would help us with the equipment, if available, as a very special case and that the cost of equipment and erection of the

Sub-station and other charges would have to be paid by us in advance and that the land proposed to be given would be inspected regarding its suitability. Accordingly we acquired the said site in August, 1987 itself and handed over physical possession of the required area to the Board immediately. However, we procured the equipment ourselves with the assistance of the Board and made arrangements for the erection of Sub-station on our own.

8. We state that as matters stand today, we completed the erection of 132 K.V. Sub-station spending nearly a sum of Rs. 2 crores and the Board has not yet completed the supply point and has not yet made available energy at 132 K.V. at Kovvur. We understand that the Board would take atleast till the end of 1988 for completing Board's Sub-station and for providing 2 feeder supply lines to our newly erected 132 K.V. Sub-station at Kovvur.

9. By letter No.CE714/F 2101/D.No.105/88 dated: 22.3.88 the Chief Engineer, Rural Electrification & Distributions required us to deposit a tentative amount of Rs. 19.39 lakhs towards the cost of work for extension of 132 K.V. supply to our unit as service line charges stating that the said amount was not refundable. The said amount was deposited with the Board during the last week of March, 1988. Thus, everything required to be done on our part was done as and when required by the Board.

10. Under the circumstances, we submit that we should not be penalised and that the surcharge should not be collected from us because the Board is not ready even today to supply energy at 132 K.V. to us at Kovvur. Till about the middle of 1987, the Board did not take any steps to make available energy 132 K.V. to our Kovvur unit. It is unreasonable to require us to expand a large sum of Rs. 2 crores for receiving energy at 132 K.V. when the Board had not taken any steps to supply at 132 K.V. to us and had not finalised the supply point to us, may be because the single Judge of the Hon'ble High Court allowed our Writ Petition and the Writ Appeal was pending disposal."

However, while dealing with this representation, and while rejecting the same the Board did not come out with any positive stand in its reply dated: 14.12.1988, the Board only observed as follows:

“The Board has considered in detail the representation made by you as well as the points raised by you during the personal hearing and after due consideration has ordered as follows:

(i) It is not true that Board has not laid its main distribution lines to Kovvur. In fact, the service line to your factory was a double circuit 132 K.V. line charged initially at 33 K.V. to release supply at 33 K.V. and hence, it is futile to argue that no distribution lines of 132 K.V. were available at Kovvur.

(ii) The incremental loss of 0.46% towards additional power of 2 MVA and for the total load of 24 MVA to be worked out to 5.52% even according to you. 7.5% additional charges are towards transmission line losses, transformation losses and cost of additional equipment which were worked out taking the State as a whole and not with particular reference to your industry and its location (i.e.) proximity to distribution line. Board has evolved uniform tariffs as per its statutory duties and it is only a part of the total cost. Board has prescribed this to induce its H.T. Consumers to go in for higher voltages.

(iii) The Board notes that you had paid the Service Line charges on 30.3.1988 and that you obtained the approval from Chief Electrical Inspector to Government on 8.4.1988. The Board therefore, decides that 7.4.1988 is the date on which you have been deemed to have become ready for receipt of power at higher voltage.

(iv) Board, however, considered your practical difficulty of procurement of 132 K.V. equipment and erection of the same within six months stipulated by the Board and decided not to levy additional charges upto 1.3.1983 instead of 1.3.1982 previously notified by the Board i.e. extending six months period to 18 months.

In the event, on the basis of your representation and taking into account the facts and circumstances of your case the Board directs that the additional charges would be levied for the period from 1.3.1983 to 7.4.1988 only.

> The Board finally requests M/s Andhra Sugars to pay the amounts due as calculated above as per the rules in force from time to time."

Even in the letter dated: 7.9.1988, it was further stated by the petitioner that even though it was ready to receive energy at 132 K.V., but it was only supplied on 24.6.1988 for which no answer is forth coming from the respondents. Even, it was also reiterated in the representation dated: 1.8.1988 in the letter issued by the Executive Engineer dated: 4.7.1988. It is also stated that 132 K.V./33 K.V. Sub-station was under construction at Kovvur. 132 K.V. was released recently and for the equipment operation of 400V three phase supply was not readily available at their Sub-station. The following is the text of the letter dated: 4.7.1988:

> "You are aware that a 132/33 KV Sub-station is under construction at Kovvur. 132 K.V. supply was released to you recently. For our equipment operation, 400V 3 phase supply is not readily available at our Sub-station premises. Hence, it is requested to allow A.P.S.E.B. to utilise your 400V – 3 phase supply till A.P.S.E. Board arrange its own supply."

27. From the aforesaid correspondence, it is clear that the petitioner has been intimating the respondents about the requirements to be fulfilled by them from time to time and even with regard to the supply point, there was any amount of correspondence on this aspect. In the meanwhile, the litigation was commenced making challenge to B.P.M.S.No. 607 which ultimately allowed by the learned Single Judge against which Writ Appeal was filed and the Writ Appeal was allowed and therefore, and ultimately the Supreme Court has cleared the matter. In this process both the parties did not take any action as the matter was subjudice before the Division Bench. Soon after setting at rest the dust and din of the controversy with regard to the power of the Board to lay down the conditions of supply by the judgment of the Supreme Court in Civil Appeal No. 793 of 1988 & Batch, the respondents started making a demand for the additional charges. The respondents have been only stating that already double line was erected and therefore, the petitioner failed to receive the

energy and under those circumstances, he is liable to pay the additional charges. As already observed, mere availability of line is not sufficient to release 132 K.V. supply. Necessary changer over equipment has to be fixed duly erecting supply point. More over, the Board did not state that by the time B.P.M.S.No. 607 was issued they were in a position to supply 132 K.V. supply. They have been only asking the petitioner to switch over to 132 K.V. energy without making available the required facility to receive the supply. For the extension of the existing 132 K.V. tower line, number of other alterations have to be made such as insulation of first span of line and last span of line for transmitting 132 K.V. energy and 132 K.V. isolators, circuit breakers and other instruments. Till such alternatives are made, it cannot be said that the Board was in a position to supply the energy at 132 K.V. The availability of 132 K.V. supply at the supply point in the *sine qua non* for claiming additional charges. Unless it is satisfactorily established that the Board was ready with the supply of 132 K.V. energy to the petitioner unit, it cannot be said that the petitioner was not ready to receive the energy. We find that the Board has not discharged its obligation to make available the supply of 132 K.V. energy. Even by February, 1988, the supply point was not established and Sub-station were not constructed. By July, 1988 also the respondents had clearly admitted that for their equipment operation 400V three phase supply was not available at their substation and requested the petitioner to allow the Board to utilise the 400V –3 phase of the petitioner till the Board arrange its own supply. It is also noticed that by 8.4.1988 the petitioner was ready to receive the energy 132 K.V. voltage but it was supplied only from 24.6.1988 and this was not disputed by the Board and the additional charges were levied only for the period from 1.3.1983 to 7.4.1988 little realising that 132 K.V. energy was actually supplied with effect from 24.6.1988. This further reinforces the contention that till 24.6.1988, the Board was not in a position to release 132 K.V. supply. It is beyond pale of controversy that the respondent-Board is an authority falling within the ambit of Article 12 of Constitution of India. Its actions ought to be fair and reasonable even in contractual sphere.

28. Considering from all angles and applying the interpretation of the Division Bench for the expression “to receive supply”, we are of the clear opinion that the Board was not in a position to supply 132 K.V. energy to the petitioner unit either by 1.3.1983 or by

7.4.1988 and hence the question of availing the supply to petitioner unit does not arise. Accordingly, we find imposition of additional charges for the period from 1.3.1983 to 7.4.1988 is wholly unwarranted and arbitrary.

29. The Writ Appeal is dismissed and the Writ Petition stands allowed. No costs.

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G.BIKSHAPATHY, J

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B. SESHASAYANA REDDY, J

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03-09-2004

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To

One copy of the Judgment to be circulated to

The Hon'ble Sri Justice G.Bikshapathy (for his Lordship's kind perusal)

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Vidyut Soudha, Somajiguda, Hyderabad.

Represented by its Member-Secretary.

2. The Superintending Engineer, Operation Circle,

A.P.S.E.B., Rajahmundry, East Godavari District.

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